

REMARKS

Applicants are submitting this Response in response to the Patent Office Communication dated March 25, 2005. This Response supplements Applicants' previously submitted Amendment on March 4, 2005 which was submitted in response to the Office Action dated October 4, 2004. In the Office Action, Claims 1, 2 and 4-8 were rejected under 35 U.S.C. § 102 in view of Schambye et al. and further in view of U.S. Patent No. 5,296,242 ("Zander"); Claims 6-8 were rejected under 35 U.S. § 102 in view of U.S. Patent No. 4,663,166 ("Veech") and further in view of Zander; Claims 1-10 were rejected under 35 U.S.C. § 103 in view of Schambye et al. and further in view of Zander; and Claims 6-16 were rejected under 35 U.S.C. § 103 in view of Veech and further in view of Zander.

In the Patent Office Communication, the Patent Office alleges that Applicants' previously submitted Amendment was not fully responsive to the Office Action. The Patent Office alleges that Applicants failed to address the issue of whether the claimed carbon dioxide partial pressure is inherently taught by Schambye and Veech. Further, the Patent Office alleges that Applicants failed to address the issue of whether it would have been obvious to modify the bicarbonate and weak acid concentrations of Schambye and Veech in order to obtain carbon dioxide partial pressures approximately the same as the carbon dioxide partial pressure of blood.

At the outset, Applicants believe that their previously submitted Amendment was fully responsive to the Office Action. However, in the spirit of cooperation and to further the examination of the present application in as expeditious manner as possible, Applicants have submitted herewith this Response that supplements Applicants' previously submitted Amendment with further amendments to the claims in addition to an Affidavit of Leo Martis, PhD. ("Martis Affidavit"), the Martis Affidavit of which is attached hereto as Exhibit A.

With respect to the issue of whether the claimed carbon dioxide partial pressure is inherently taught by Schambye, Applicants believe that Schambye fails to disclose, explicitly or inherently, or suggest the claimed carbon dioxide partial pressure, namely the carbon dioxide partial pressure that is less than 60 mmHg, such as approximately the same as the carbon dioxide partial pressure of normal blood as further defined in Claims 3, 9, 10 and 11. As supported by the Martis Affidavit, the Schambye reference provides a partial pressure of carbon dioxide that equals 86.6 mmHg. Clearly, this is different than the claimed partial pressure of carbon dioxide

of less than 60 mmHg such that one skilled in the art would consider that Schambye is distinguishable from the claimed invention at least in this regard.

Further, Applicants have amended independent Claims 1, 6, 10 and 11 to recite, in part, a weak acid selected from the group consisting of lactate; citrate; isocitrate, cis-aconitase, α -ketoglutarate, succinate, fumarate, malate, and oxaloacetate. Indeed, each of the representative bicarbonate-based solutions in Schambye not only includes pyruvate but includes pyruvate in addition to lactate. See, Schambye, Table I. Again, the claims have been amended to require that the weak acid includes a single weak acid not including pyruvate and as further defined in the claims. Based on at least these reasons and further based on Applicants' previously submitted Amendment and remarks therein to the extent applicable, Applicants believe that Schambye on its own is clearly distinguishable from the claimed invention.

With respect to the Veech reference, again, the claims have been amended to recite, in part, a single weak acid not including pyruvate and as further defined as discussed above. In contrast, Veech provides a peritoneal dialysis solution that utilizes a lactate/pyruvate couple. See, Veech, Table 8. Thus, Veech effectively teaches away from the claimed invention that again recites, in part, a single weak acid not including pyruvate. Therefore, Applicants believe that the issue regarding the partial pressure of carbon dioxide in Veech as alleged by the Patent Office has been rendered moot in view of same. For at least these reasons and further based on Applicants previously submitted Amendment and remarks therein, where applicable, Applicants believe that Veech on its own is distinguishable from the claimed invention.

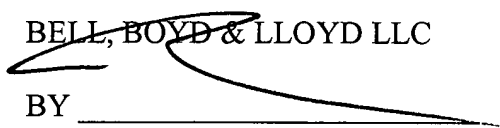
As previously discussed, the Patent Office further alleges that Applicants failed to address the issue of whether it would have been obvious to modify the bicarbonate and weak acid concentrations of Schambye and Veech in order to obtain carbon dioxide partial pressures approximately the same as the partial pressure of carbon dioxide. Again, Applicants believe that they were fully responsive to this issue as addressed in Applicants' previously submitted Amendment and remarks therein as discussed above. At the outset, the Patent Office has relied on the Zander reference in an attempt to remedy the deficiencies of both Schambye and Veech. As detailed in Applicants' previously submitted Amendment, one skilled in the art would not look to Zander for guidance in designing a peritoneal dialysis solution as claimed. Indeed, Zander fails to provide a solution with a buffer content capable of maintaining the acid-based

balance, and further Zander promotes the use of acetate as previously discussed. In contrast, the claimed peritoneal dialysis solutions provide a unique combination of two buffers (bicarbonate and a single weak acid that does not include acetate nor pyruvate) and which is both safe and effective. Therefore, the Patent Office cannot rely on Zander on its own to remedy the deficiencies of Schambye and Veech.

Further, the claims have been amended to recite in part a single weak acid not including pyruvate. Again, Veech in addition to Schambye provide peritoneal dialysis solutions that include a combination of weak acids including pyruvate. Thus, both Veech and Schambye effectively teach away from the claimed invention in at least this regard. Therefore, Applicants do not believe that one skilled in the art would be motivated to modify Veech and Schambye even in view of Zander to provide a peritoneal dialysis solution as claimed.

Based on at least these reasons and further based on Applicants' previously submitted amendments and remarks therein, Applicants believe that Veech and Schambye even if properly combinable with Zander are distinguishable from the claimed invention. Accordingly, Applicants respectfully submit that the anticipation and obviousness rejections in view of same should be withdrawn, and thus the present application should pass to allowance. At a minimum, Applicants respectfully submit that the Patent Office should consider that Applicants have been fully responsive to the Office Action and thus should enter Applicants previously submitted Amendment and this Response that supplements same for examination purposes.

Respectfully submitted,


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